

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

<p>IN RE:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p>Debtors.¹</p>	<p>PROMESA Title III</p> <p>No. 17 BK 3283-LTS</p> <p>(Jointly Administered)</p>
<p>IN RE:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO ("ERS"),</p> <p>Debtor.</p>	<p>PROMESA Title III</p> <p>No. 17 BK 3566-LTS</p> <p>(Jointly Administered)</p>

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

**LIMITED RESPONSE AND JOINDER OF THE BANK OF NEW YORK
MELLON, AS FISCAL AGENT, TO MOTION OF CERTAIN SECURED
CREDITORS OF THE EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO FOR
RELIEF FROM THE AUTOMATIC STAY**

The Bank of New York Mellon (the “Fiscal Agent”), as fiscal agent for the pension funding bonds issued by the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), through its undersigned counsel, hereby responds to and joins in the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Relief from the Automatic Stay* [No. 17 BK 3566-LTS, ECF No. 289] (the “Motion”), pursuant to which the movants seek relief from the automatic stay and, in support hereof, respectfully represents as follows:²

BACKGROUND

A. ERS, the Fiscal Agent, and the Resolution

1. As more fully set forth in the Motion, ERS is a trust established by the Commonwealth in 1951 to provide pension and other benefits to officers and employees of the government of the Commonwealth, members and employees of the Legislature, and officers and employees of public corporations and municipalities of the Commonwealth. Motion ¶ 7. ERS is funded by employer contributions and is authorized to incur debt and to secure such debt with its assets. *Id.* ¶¶ 8-9.

2. On January 24, 2008, ERS adopted the Resolution, pursuant to which ERS issued three series of pension funding Bonds in the aggregate original principal amount of approximately \$2.9 billion. The Fiscal Agent serves as fiscal agent under the Resolution. *See* Resolution § 801.

² Capitalized terms used but not defined herein have the meanings given in the Pension Funding Bond Resolution (as supplemented, the “Resolution”) adopted by ERS on January 24, 2008.

3. The Resolution requires ERS to “punctually pay or cause to be paid the principal of and premium, if any, on every Bond” and “to promptly collect and remit the Employers’ Contributions to the Fiscal Agent.” Resolution § 701; *see id.* §§ 704, 709 (requiring ERS to perform all acts required under the provisions of the Act and the Resolution).

4. In accordance with the Resolution, ERS granted the Fiscal Agent, for the benefit of itself and all Bondowners, a security interest in and lien on the Pledged Property, including all employer contributions received by ERS, all right, title, and interest of ERS in and to those contributions, and all rights to receive those contributions. Resolution § 501; *id.* Ex. B (defining “Pledged Property”). The Pledged Property is free and clear of any other pledge, lien, charge, or encumbrance, *id.* § 705, and the assignment and grant of the security interest is “valid and binding as against all parties having claims of any kind in tort, contract or otherwise against [ERS], irrespective of whether such parties have notice thereof.” *Id.* § 501.

B. ERS Title III Case

5. On May 21, 2017, The Financial Oversight and Management Board for Puerto Rico filed a petition for relief on behalf of ERS under title III of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2101 *et seq.*

6. On May 31, 2017, certain holders of beneficial interests in the Bonds filed the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico Request for Adequate Protection and for Relief from the Automatic Stay* (the “2017 Motion”) [No. 17 BK 3566-LTS, ECF No. 26], seeking adequate protection or relief from the automatic stay.

7. On June 19, 2017, the Fiscal Agent joined in the 2017 Motion, requesting that any relief be granted to the Fiscal Agent, as the lienholder for the benefit of itself, the

movants, and all other Bondowners and Beneficiaries under the Resolution.[No. 17 BK 3566-LTS, ECF No. 89].

8. As more fully described in the Motion, the 2017 Motion was resolved pursuant to a joint stipulation among ERS and the movants [No. 17 BK 3566-LTS, ECF No. 171] that contemplated, among other things, continuing payments equal to the contractual amount of interest due and payable on the Bonds to all Bondowners.

9. On July 3, 2018, certain holders of beneficial interests in the Bonds filed the current Motion seeking relief from the automatic stay under section 362(d)(1) of the Bankruptcy Code.

LIMITED RESPONSE AND JOINDER

10. The Fiscal Agent joins in the Motion for the reasons set forth therein. To the extent that the Court grants the Motion, the relief should be granted to the Fiscal Agent, as the holder of liens and security interests, for the benefit of itself, the movants, and all other Bondowners and Beneficiaries, and not solely for the movants.

WHEREFORE, the Fiscal Agent respectfully requests that the Court enter an order granting the Fiscal Agent, for the benefit of itself, all Bondowners, and other Beneficiaries, relief from the automatic stays imposed in ERS's and the Commonwealth's title III proceedings to exercise any and all rights and remedies that may be available to the Fiscal Agent under the Resolution or otherwise at law or in equity, including enforcement of its liens and security interests.

Dated: July 10, 2018
San Juan, Puerto Rico

Respectfully submitted,

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